IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1371 OF 2007

1. Mrs.Harshida H.Nayak]
aged 59, Principal of]
L.U. AND M.V.College]
of Arts, Science and]
Commerce having my]
office at Andheri (E)]
]
2. Dr.(Mrs) Malini Johri]
aged 59, Principal of]
Chinai College of]
Commerce and Economics]
having my office at]
Andheri (E)]
]
3. Hemant Vissanji]
aged 56, Secretary of]
Laxmi Education Society]
having its office at 9,]
Wallace Street, Fort,]
Mumbai-400001]..Petitioners

Vs.

1. State of Maharashtra]
]
2. Senior Inspector of]
Police, Andheri East]
Police Station,]
situated at Andheri (E)]
Mumbai-4000069]..Respondents

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Mr.Shirish Gupte Senior Advocate with Mr.M.P.S.Rao and Mr.Nimish Kothare and Paul P P i/b H and Hormasjee & Co. for Petitioners
Mrs.A.S.Pai APP for Respondents

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CORAM: R.M.S.KHANDEPARKAR, AND SMT.V.K.TAHILRAMANI, JJ.

DATE : AUGUST 01, 2007

P.C.:

1. Heard. Rule. By consent, rule is made returnable forthwith.

2. A short point which is sought to be raised in this petition is the illegality in relation to issuance of notice under Section 149 of Code of Criminal Procedure, 1973 against the Principal and Management Trustees of Educational Institution. The contention on behalf of the Respondents is that issuance of such notice was warranted on account of disturbances sought to be made by the students and their parents on account of illegal refusal on the part of Principal and the Administrative Trustees to have the discussion with the students and their parents on the point of admission to the Educational Institution. The question of issuance of notice under Section 149 of Code of Criminal Procedure can arise only when it is apprehended by the police that the addressee is likely to indulge in any illegal activities and commission of some offence which may give rise to law and order

problem. Mere refusal on the part of the Principal or Trustees of the Educational Institution cannot be sought to give rise to the commission of cognizable offence by others. Merely because the students and their parents chose to indulge in illegal activities of taking out Morchas and/or holding Dharnas which may lead to law and order problem, that by itself cannot be construed to be sufficient to proceed against the Principal and the Trustees of the Educational Institution. It is responsibility of the police personnel to enforce law and order by taking appropriate action against those persons who seek to indulge in illegal activities. Refusal to have the discussion with the students and/or their parents by itself cannot be said to constitute any offence nor it be construed as giving rise to any right in favour of students or their parents to hold Dharnas against Educational Institution which can lead to law and order problem. Certainly students who are dissatisfied by any decision on the part of the Principal or the Management Trustees of the Educational Institution, including their refusal to give cooperation, the students and their parents have appropriate remedies available under the

various statutory provisions. Merely because students and their parents chose to decide to take law in their hands by indulging in illegal activities and causing disturbances to the public peace, that itself will not be sufficient to empower the police to issue any notice to the Principal or Trustees of the Educational Institution in exercise of powers under Section 149 of Code of Criminal Procedure unless there is cogent material or reason to apprehend commission of any offence on the part of those persons.

3. In the matter in hand, undisputedly the reason for issuance of notice under Section 149 of the Code of Criminal Procedure, was the illegal activities on the part of the students and their parents. Merely because those activities were on account of certain decision on the part of the Principal or Trustees, that by itself cannot be sufficient to construe that there was sufficient ground to apprehend commission of offence by such Principal or Trustees. There being no other reason disclosed for issuance of notice under Section 149 of the Code of Criminal Procedure, in the matter in hand, such notice is liable to be quashed.

4. In the result, the petition succeeds. The impugned notice issued under Section 149 of the Code of Criminal Procedure to the Petitioners is hereby quashed. This, however, will not preclude the police authorities from complying with their obligation to maintain law and order problem in the concerned area as well as rendering necessary assistance to enable to maintain the law and order within the premises of such Educational Institution. At the same time, it would not be a clean chit to the Principal or Trustees to take any decision which would invite law and order situation. We make it clear that this would not also preclude the concerned authorities from taking required decision for smooth process of admission to the Educational Institution adhering to the provisions of law applicable to such admissions.

5. With these observations, the petition is allowed in above terms and is accordingly disposed of.

[R.M.S.KHANDEPARKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]